

Court of Appeals, State of Michigan

ORDER

People of the City of Dearborn v Charles Gentelia

Docket No. 288924

LC No. 08-004470-AR

Christopher M. Murray
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the October 25, 2008 order of the Wayne Circuit Court suppressing the evidence and vacating the convictions of possession of narcotics and possession of paraphernalia hereby is REVERSED. The district court's denial of defendant's motion to suppress the evidence was not clearly erroneous. Where defendant walked briskly toward the police officer, with his fist clenched and his arm cocked back, and declined to obey the officer's commands to reveal what was in his hand, the record contains evidence to support the officer's reasonable fear for his safety. Courts give deference to the experience of law enforcement officers and their assessments of criminal "modes and patterns." *People v Nelson*, 443 Mich 626, 636; 505 NW2d 266 (1993) (citation omitted). Thus, the command for defendant to open his hand was reasonable. Where defendant failed to obey the command, the officer properly arrested defendant. Police officers may search the arrestee when conducting a search incident to a lawful arrest. *People v Eaton*, 241 Mich App 459, 463; 617 NW2d 363 (2000), lv den 463 Mich 983 (2000). Here, police officers discovered the crack pipe and crack cocaine when they searched defendant incident to his lawful arrest. Accordingly, the evidence was properly admitted. Defendant's convictions are REINSTATED. This case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 16 2009

Date

Sandra Schultz Mengel
Chief Clerk